

ORIGINAL

MEMORANDUM



TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

DATE: November 28, 2012

RE: **STAFF REPORT** – IN THE MATTER OF THE APPLICATION OF ACCESS ONE, INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-03699A-12-0097)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide Resold Local Exchange Telecommunications Services

Staff is recommending approval of the Application with conditions.

SMO:PJG:red

Originator: Pamela J. Genung

Attachment: Original and Thirteen copies

DOCKETED

NOV 28 2012

SM

RECEIVED
2012 NOV 28 P 1:21
DOCKET CONTROL

SERVICE LIST FOR: ACCESS ONE, INC.
DOCKET NO. T-03699A-12-0097

Mr. Patrick D. Crocker
Crocker & Crocker
107 W Michigan Avenue, 4th Floor
Kalamazoo, Michigan 49007

Ms. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief Administrative Law Judge, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

ACCESS ONE, INC.
DOCKET NO. T-03699A-12-0097

IN THE MATTER OF THE APPLICATION OF ACCESS ONE, INC. FOR APPROVAL OF A
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD AND
FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

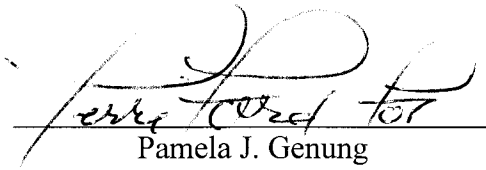
NOVEMBER 30, 2012

TABLE OF CONTENTS

	PAGE
1. INTRODUCTION.....	1
2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES.....	1
3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES	2
4. ESTABLISHING RATES AND CHARGES	3
5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES.....	4
5.1 <i>Number Portability.....</i>	<i>4</i>
5.2 <i>Provision of Basic Telephone Service And Universal Service.....</i>	<i>4</i>
5.3 <i>Quality of Service</i>	<i>4</i>
5.4 <i>Access to Alternative Local Exchange Service Providers</i>	<i>5</i>
5.5 <i>911 Service.....</i>	<i>5</i>
5.6 <i>Custom Local Area Signaling Services.....</i>	<i>5</i>
6. REVIEW OF COMPLAINT INFORMATION.....	5
7. COMPETITIVE SERVICES ANALYSIS	6
7.1 <i>Competitive Services Analysis for Local Exchange Services</i>	<i>6</i>
8. RECOMMENDATIONS.....	7
8.1 <i>Recommendations on The Application For A CC&N.....</i>	<i>8</i>
8.2 <i>Recommendation on the Applicant's Petition to Have Its Proposed Services Classified as Competitive.....</i>	<i>10</i>

STAFF ACKNOWLEDGMENT

The Staff Report for Access One, Inc., Docket No. T-03699A-12-0097, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of the Access One, Inc. Application for a Certificate of Convenience and Necessity to provide Resold and Facilities-Based Local Exchange Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in black ink, appearing to read 'Pamela J. Genung', is written over a horizontal line.

Pamela J. Genung
Public Utilities Analyst V

1. INTRODUCTION

On March 16, 2012, Access One, Inc. (“Access One” or “Applicant” or “Company”) filed an Application for a Certificate of Convenience and Necessity (“CC&N”) to provide resold and facilities-based local exchange telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive. On March 16, 2012, Access One submitted proposed tariffs for the services it is requesting the authority to provide.

On May 14, 2012, Staff issued its First Set of Data Requests to Access One. Responses to Staff’s First Set of Data Requests and one replacement page to Access One’s proposed local exchange telecommunications services tariff, Arizona Tariff No. 2, were received from the Applicant on June 22, 2012. On October 19, 2012, Access One filed a Revised Application indicating that it is requesting a CC&N to provide only resold, not facilities-based, local exchange telecommunications services.

Staff’s review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff’s analysis also considers whether the Applicant’s services should be classified as competitive and if the Applicant’s initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant is currently providing competitive local exchange and/or interexchange services in forty-three (43)¹ States/Jurisdictions. Staff contacted the Public Utility Commissions in sixteen (16) of the States/Jurisdictions listed by the Applicant to determine whether Access One is certificated or registered to provide competitive local exchange and/or interexchange telecommunications services. Staff also inquired whether there were any consumer complaints filed against the Applicant. Staff obtained information from twelve (12) of the sixteen (16) States/Jurisdictions indicating that Access One is authorized to provide local exchange and/or interexchange services in those twelve (12) States/Jurisdictions. There was one (1) consumer cramming complaint filed against Access One in the State of Michigan during the last twelve (12) months. Access One provided a refund to resolve the billing dispute and the complaint was closed.

Access One was granted authority to provide competitive resold long distance telecommunications services in Arizona on August 27, 1999, in Decision No. 61922. At present, Access One is providing resold long distance telecommunications services to thirty (30)² business customers in Arizona. In its response to Staff Data Request PJG 1.3, Access One

¹ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

² Response to Staff Data Request PJG 1.9.

provided an update to its list of senior management. The seven members of the senior management team have, on average, over twenty-two (22) years' experience in the telecommunications industry.

In its Revised Application, at (A-17), Access One stated that it intends to resell services of XO Communications. Access One indicated that it intends to offer local exchange telecommunications services in the business market within Arizona.³ In response to Staff Data Request PJG 1.5, Access One stated that it plans to provide customer service to its Arizona subscribers through three basic methods. The first method is via an online portal that will allow the customer to submit basic customer service requests through the Access One website. The second option is by contacting the Account Manager which can assist with requests and inquiries. The third method is by calling into Access One's Customer Service Center via a toll free number. The Center is staffed between the hours of 7:00 AM CST to 6:00 PM CST. In the event that an issue arises outside of those business hours, the customer will be routed to Access One's 24/7 answering service. An on-call technician will contact the customer within thirty (30) minutes of receipt of the message from the Access One dispatch service. Access One also stated that it does not currently have nor is planning to have a customer service center or employees in Arizona.

Based on the above information, Staff believes Access One possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant provided audited financial statements of Access One, Inc. for the two years ending December 31, 2010 and December 31, 2011. The financial statements for the year ending December 31, 2010 list total assets of \$5,170,353, total equity of negative \$674,095 and net income of \$515,190. The financial statements for the year ending December 31, 2011 list total assets of \$5,153,613, total equity of negative \$67,605 and net income of \$606,487. The Applicant provided notes related to the financial statements.

The Applicant stated in its proposed Arizona Tariff No. 2 (reference Section 2, on page 15, at 2.5.4 and 2.5.5) that it does not require advances, deposits or prepayments. The Commission's current performance bond or irrevocable sight draft Letter of Credit ("ISDLC") requirements are \$10,000 for resold long distance (for those resellers who collect advances, prepayments, or deposits, or are offering prepaid calling services), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance, and \$100,000 for facilities-based local exchange services. Since the Applicant is requesting a CC&N for resold local exchange telecommunications services, the minimum amount of a performance bond or ISDLC would be \$25,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum performance

³ Response to Staff Data Request PJG 1.8.

bond or ISDLC amount. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code (“A.A.C.”) R14-2-1107.

To that end, Staff recommends that the Applicant procure either a performance bond or ISDLC equal to \$25,000. The minimum performance bond or ISDLC amount of \$25,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant’s customers. The performance bond or ISDLC amount should be increased in increments of \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 of the performance bond or ISDLC amount. If the Applicant desires to discontinue service, it must file an Application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an Application to discontinue service. Failure to meet this requirement could result in forfeiture of the Applicant’s performance bond or ISDLC.

Staff further recommends that proof of the above mentioned performance bond or ISDLC be docketed within 30 days of the effective date of a Decision in this matter. The original performance bond or ISDLC should be filed with the Commission’s Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company’s customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company’s customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company’s customers.

4. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier (“ILEC”), along with various competitive local exchange carriers (“CLECs”) and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided and the rate for the service may not be less than the Company’s total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company indicating that its fair value rate base is zero. Accordingly, the Company's fair value rate base is too small to be useful in a fair value analysis. Access One has submitted proposed tariff pages reflecting the rates that it will be charging for its local exchange telecommunications services in Arizona. Access One has also provided additional rate comparison information of other competitive local exchange carriers in the State of Arizona. Staff has reviewed the proposed rates and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value rate base information provided should not be given substantial weight in this analysis.

5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of Local Exchange service are discussed below.

5.1 Number Portability

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

5.2 Provision of Basic Telephone Service and Universal Service

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

5.3 Quality of Service

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest dba CenturyLink (fka USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter,

the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

5.4 Access to Alternative Local Exchange Service Providers

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

5.5 911 Service

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

5.6 Custom Local Area Signaling Services

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

6. REVIEW OF COMPLAINT INFORMATION

The Applicant has not had an Application for authority to provide service denied in any state. The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions filed against Access One through August 16, 2012. In addition, Consumer Services reports that Access One is in good standing with the Corporations Division of the Commission.

The Applicant indicated that none of its officers, directors or partners has been convicted of any criminal acts in the past ten (10) years. The Applicant also indicated that none of its

officers, directors or partners has been involved in any civil or criminal investigations, or any informal complaints. Further, a search of the Federal Communications Commission's website found that there have been no complaints filed against Access One.

7. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

7.1 Competitive Services Analysis for Local Exchange Services

7.1.1 A description of the general economic conditions that exist, which make the relevant market for the service one that is competitive.

The statewide local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments. The areas that the Applicant seeks to enter may also be served by wireless carriers and Voice over the Internet Protocol ("VoIP") providers.

7.1.2 The number of alternative providers of the service.

CenturyLink and various independent ILECs provide local exchange service in the State. CLECs and local exchange resellers are also providing local exchange service. The areas that the Applicant seeks to enter may also be served by wireless carriers and VoIP providers.

7.1.3 The estimated market share held by each alternative provider of the service.

CenturyLink and CLECs are the primary providers of local exchange service in CenturyLink's Service territories. Independent ILECs are the primary providers of local exchange service in their service territories.

7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

Access One does not have any affiliates that are alternative providers of local exchange service in Arizona.

7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested the authority to provide in their respective service territories. Similarly, many of the CLECs, local exchange resellers, wireless carriers and VoIP providers also offer substantially the same services.

7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories. Competition exists in most urban markets, but to a lesser degree in rural areas of the State.
- b. One in which new entrants will be dependent upon ILECs:
 1. To terminate traffic to customers.
 2. To provide essential local exchange service elements until the entrant's own network has been built.
 3. For interconnection.
- c. One in which existing ILECs and CLECs have had an existing relationship with their customers that the Applicant will have to overcome if it wants to compete in the market and one in which the Applicant will not have a history in the Arizona local exchange service market.
- d. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

8. RECOMMENDATIONS

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

8.1 Recommendations on The Application For A CC&N

This Application may be approved without a hearing pursuant to A.R.S. § 40-282. Staff recommends that Applicant's Application for a CC&N to provide intrastate resold local exchange telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated; and
9. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.
2. The Applicant shall:
 - a. Procure either a performance bond or ISDLC equal to \$25,000. The minimum performance bond or ISDLC amount of \$25,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or ISDLC amount should be increased in increments of \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 of the performance bond or ISDLC amount.
 - b. Docket proof of the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a Decision in this matter. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.
3. Abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

8.2 *Recommendation on the Applicant's Petition to Have Its Proposed Services Classified as Competitive*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange service market where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.